

[Guity v. Tennessee Valley Authority](#), 95-ERA-34 (ALJ Aug. 15, 1996)

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DATE: August 15, 1996

CASE No.: 95-ERA-34

In the Matter of

MANSOUR GUILTY,

Complainant,

v.

TENNESSEE VALLEY AUTHORITY,

Respondent.

**RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AND DISMISSING COMPLAINT**

The parties have submitted to me a Memorandum of Understanding and Agreement together with a Joint Motion for Dismissal and a draft Recommended Order of Dismissal (annexed hereto and incorporated by reference herein.) The Memorandum of Understanding and Agreement would result in the settlement of the instant case; Case No. 90-ERA-10, involving the same parties, which is also pending before the undersigned administrative law judge; and a complaint docketed in the United States District Court for the Eastern District of Tennessee as Civil Action No. 3-87-843, relating to the enforcement of an August 15, 1986 settlement agreement pertaining to a prior case involving the same parties before the Office of Administrative Law Judges, Case No. 86-ERA-16. Although I agree that the instant case should be dismissed, I have also considered the merits of the underlying settlement and recommend that the settlement be approved as resolving both Case No. 90-ERA-10 and the instant case.

The parties have requested that I recommend to the Secretary (acting through the Administrative Review Board) that this case be dismissed. However, a stipulated dismissal may not be applicable to the instant case in view of the settlement of the case by the parties, even though the settlement provides that it will take effect in District Court even if it is not approved by the Labor Department. *Compare Gergans v. Edward Hines, Jr., Hospital*, 94-ERA-26 (Sec'y Dec. 7, 1994) (disposition of complaints under Rule 41 can only be effected by final order of the Secretary) *with Hoffman v. Fuel Economy Contracting*, 87-ERA-33 (Sec'y Aug. 4, 1989) (finding unconditional right to dismissal

by stipulation under Rule 41 inapplicable to ERA proceedings when a settlement is involved, based upon 42 U.S.C. § 5851(b)(2)(A)). Recent authority by the Administrative Review Board has made clear that before a matter may be dismissed, an ALJ must

determine whether the dollar amount received by the Complainant is fair, adequate and reasonable. *See Klock v. Tennessee Valley Authority*, 95-ERA-20 (ARB May 30, 1996).

This case arose from a hearing request dated May 11, 1995 and the case was noticed for a hearing beginning on June 28, 1995, to continue until completed. The hearing was continued at the unopposed request of the Complainant following a telephone conference of June 21, 1995 and an additional conference was held on August 1, 1995. The Respondent filed a Motion for Summary Decision on August 10, 1995. Following discovery, the Complainant responded to the Motion on March 29, 1996.

In a conference call of April 25, 1996 in the related case, Case No. 90-ERA-10,¹ the parties provided the undersigned administrative law judge with a status report concerning the pending litigation between the Complainant and the Respondent and asked for a stay of proceedings so that settlement negotiations could be completed. The parties indicated that the district court trial had been conducted. Because of an apparent overlap, I asked the parties to confer and advise what issues are currently pending before me and what issues were before the district court. I requested that the parties try to work out all pending issues in both cases before me, but that if they were unable to do so, they should define the issues prior to trial. I commend the parties for having amicably resolved the pending issues in all three matters.

I have considered the Memorandum of Understanding and Agreement (which is annexed hereto and incorporated by reference herein) and I find that it constitutes a fair, adequate, and reasonable disposition of the pending case (as well as the other pending matters) in accordance with the employee protection provisions of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. § 5851. I have also signed the Recommended Order of Dismissal (also annexed hereto and incorporated by reference herein) but due to the authorities cited above, I am also issuing this recommended decision and order. Accordingly,

IT IS HEREBY RECOMMENDED that the Secretary of Labor, through the Administrative Review Board, approve the Memorandum of Understanding and Agreement and issue an Order dismissing this case with prejudice.

PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.

[ENDNOTES]

¹ The parties have opposed consolidation of the two matters.